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EXTRAORDINARY

PART II—Section 2

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LOK SABHA

The following Bill was introduced in Lok Sabha on the 10th December, 1958:—

*BILL No. 128 of 1958

A Bill further to amend the Pharmacy Act, 1948.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Pharmacy (Amendment) Act, 1958. Short title and commencement.

5 (2) Section 19 shall come into force at once; and the remaining provisions shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States or areas thereof.

8 of 1948. 10 2. In section 1 of the Pharmacy Act, 1948 (hereinafter referred to as the principal Act),— Amendment of section 1.

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

15 “(2) It extends to the whole of India except the State of Jammu and Kashmir.”;

*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Lok Sabha the consideration of the Bill.

(b) in sub-section (3), the words "not later than three years from the commencement of this Act," shall be omitted; and the following proviso shall be inserted at the end, namely:—

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"Provided that where on account of the territorial changes brought about by the reorganisation of States on the 1st day of November, 1956, Chapters III, IV and V have effect only in a part of a State, the said Chapters shall take effect in the remaining part of that State from such date as the State Government may in like manner appoint".

Amendment
of section 2.

3. In section 2 of the principal Act.—

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(a) for clause (c), the following clause shall be substituted, namely:—

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"(c) "Indian University" means a university established or incorporated under any law for the time being in force in the territories to which this Act extends;";

(b) for clause (f), the following clause shall be substituted, namely:—

"(f) "medical practitioner" means a person—

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(i) holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916, or specified in the Schedules to the Indian Medical Council Act, 1956; or

7 of 1916.
102 of 1956.

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(ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practising the modern scientific system of medicine; or

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(iii) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948; or

16 of 1948.

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(iv) who is engaged in the practice of veterinary medicine and who possesses qualifications approved by the State Government;";

(c) clause (k) shall be omitted.

Amendment
of section 3.

4. In section 3 of the principal Act.—

(a) after clause (d), the following clause shall be inserted, 35
namely:—

"(dd) the Drugs Controller, India, *ex officio* or if he is unable to attend any meeting, a person authorised by him in writing to do so;";

(b) for the proviso, the following proviso shall be substituted, namely:—

5 “Provided that for five years from the date on which this Chapter comes into force in the State of Kerala, Mysore or Rajasthan, as the case may be, instead of a member elected under clause (g), the State Government shall nominate one member, being a person eligible for registration as a pharmacist under section 31”.

5. In section 5 of the principal Act, in sub-section (1), the proviso to shall be omitted. Amendment of section 5.

6. In section 8 of the principal Act, in sub-section (1), the proviso shall be omitted. Amendment of section 8.

7. In section 19 of the principal Act, after clause (d), the following clause shall be inserted, namely:— Amendment of section 19.

15 “(dd) the officer-in-charge of drugs control organisation of the State under the Drugs Act, 1940, *ex officio* or if he is unable to attend any meeting, a person authorised by him in writing to do so;”.

20 8. In section 21 of the principal Act, in sub-section (1), after clause (d), the following clause shall be inserted, namely:— Amendment of section 21.

23 of 1940. “(dd) the officer-in-charge of drugs control organisation of each participating State under the Drugs Act 1940, *ex officio* or if he is unable to attend any meeting, a person authorised by him in writing to do so;”.

25 9. In section 31 of the principal Act, for the words “A person shall be entitled”, the words “A person who has attained the age of eighteen years shall be entitled” shall be substituted. Amendment of section 31.

10. In section 32 of the principal Act,— Amendment of section 32.

(a) in sub-section (1),—

30 (i) for the words “a person shall on payment of the prescribed fee”, the words “a person who has attained the age of eighteen years shall on payment of the prescribed fee” shall be substituted;

35 (ii) in the proviso, for the words “under this sub-section”, the words, brackets and letters “under clause (a) or clause (c)” shall be substituted;

(b) in sub-section (2),—

(i) for the words “twenty-one years”, the words “eighteen years” shall be substituted;

(ii) the words "or is a registered pharmacist in another State" shall be inserted at the end.

Insertion of
new section
32A.

11. After section 32 of the principal Act, the following section shall be inserted, namely:—

Special
provisions
for regis-
tration of cer-
tain persons.

"32A. (1) Notwithstanding anything contained in section 32, a State Council may also permit to be entered on the register—

(a) the names of displaced persons who have been carrying on the business or profession of pharmacy as their principal means of livelihood from a date prior to the 4th day of March, 1948, and who satisfy the conditions for registration as set out in section 31;

(b) the names of citizens of India who have been carrying on the business or profession of pharmacy in any country outside India and who satisfy the conditions for registration as set out in section 31; 15

(c) the names of persons who resided in an area which has subsequently become a territory of India and who satisfy the conditions for registration as set out in section 31;

(d) the names of persons who carry on the business or profession of pharmacy in the State, and would have satisfied the conditions for registration as set out in section 31, on the date appointed under sub-section (2) of section 30, had they applied for registration on or before that date;

(e) the names of persons who were qualified to be entered in the register for a State as it existed immediately before the 1st day of November, 1956, but who, by reason of the area in which they resided or carried on their business or profession of pharmacy having become part of a State as formed on that date, are not qualified to be entered in the register for the latter State only by reason of their not having passed either a matriculation examination or an examination prescribed as being equivalent to a matriculation examination or an approved examination or of their not possessing a qualification approved under section 14; 35

(f) the names of persons—

(i) who were included in the register for a State as it existed immediately before the 1st day of November, 1956; and

(ii) who, by reason of the area in which they resided or carried on their business or profession of pharmacy having become part of a State as formed on that date, reside or carry on such business or profession in the latter State;

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(g) the names of persons who reside or carry on their business or profession of pharmacy in an area in which this Chapter takes effect after the commencement of the Pharmacy (Amendment) Act, 1958, and who satisfy the conditions for registration as set out in section 31.

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(2) Any person who desires his name to be entered in the register in pursuance of sub-section (1) shall make an application in that behalf to the State Council, and such application shall be accompanied by the prescribed fee.

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(3) The provisions of this section shall remain in operation for a period of two years from the commencement of the Pharmacy (Amendment) Act, 1958:

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Provided that the State Government may, by notification in the Official Gazette, extend the period of operation of clause (a), clause (b) or clause (c) of sub-section (1) by such further period or periods, not exceeding two years in the aggregate, as may be specified in the notification.

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Explanation 1.—For the purposes of clause (a) of sub-section (1), "displaced person" means any person who on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan, has, on or after the 1st day of March, 1947, left or been displaced from his place of residence in such area and who has since then been residing in India.

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Explanation 2.—For the purposes of clauses (b), (c) and (g) of sub-section (1), the period referred to in clause (d) of section 31 shall be computed with reference to the date of application.

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12. In section 34 of the principal Act, in sub-section (3), for the words "in the prescribed manner endorse the certificate of registration accordingly", the words "issue a receipt therefor and such receipt shall be proof of renewal of registration" shall be substituted.

Amendment
of section
43.

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13. In sub-section (1) of section 36 of the principal Act,—

Amendment
of section
36.

(a) in clause (iii), after the words "for the purposes of his business of pharmacy", the words "or employed to work under

him in connection with any business of pharmacy" shall be inserted;

(b) in the proviso,—

(i) in clause (c), after the words "employed by the registered pharmacist for the purposes of his business of 5 pharmacy", the words "or employed to work under him in connection with any business of pharmacy" shall be inserted;

(ii) in clause (e), after the words "by persons employed by him", the words "or by persons under his control" shall ~~10~~ be inserted.

Substitution of new section for section 40. 14. For section 40 of the principal Act, the following section shall be substituted, namely:—

Printing of register and evidentiary value of entries therein.

"40. (1) As soon as may be after the 1st day of April subsequent to the commencement of the Pharmacy (Amendment) 15 Act, 1958, the Registrar shall cause to be printed copies of the register as it stood on the said date.

(2) The Registrar shall thereafter cause to be printed as soon as may be after the 1st day of April in each year copies of the annual supplement to the register referred to in sub-section 20 (1), showing all additions to, and other amendments in, the said register.

(3) (a) The register shall be brought up-to-date three months before ordinary elections to the State Council are held and copies of this register shall be printed. 25

(b) The provisions of sub-section (2) shall apply to the register as so printed as they apply to the register referred to in sub-section (1).

(4) The copies referred to in sub-section (1) or sub-section (2) or sub-section (3) shall be made available to persons 30 applying therefor on payment of the prescribed charge and shall be evidence that on the date referred to in the register or annual supplement, as the case may be, the persons whose names are entered therein were registered pharmacists.

Amendment of section 41. 15. In section 41 of the principal Act,—

(a) in clause (b) of sub-section (2), after the words "or any combination of such words", the words "or of any such word with any other word" shall be inserted;

(b) in sub-section (3), after the words "the State Government or", the words "any officer authorized in this behalf by the State Government or by order of" shall be inserted.

16. In section 42 of the principal Act,— Amendment of section 42.

5 (a) in sub-section (1), the words "except under the direct and personal supervision of a registered pharmacist" shall be omitted;

10 (b) in sub-section (3), for the words "an order of the State Government", the words "order of the State Government or any officer authorised in this behalf by the State Government, or by order of the Executive Committee of the State Council" shall be substituted.

17. In sub-section (2) of section 46 of the principal Act,— Amendment of section 46.

15 (a) in clause (j), the words "and the manner of endorsement of renewals thereof" shall be omitted;

(b) after clause (k), the following clause shall be inserted, namely:—

"(kk) the conduct of pharmacists and their duties in relation to medical practitioners, the public and the profession of pharmacy;"

18. (1) Where on account of the territorial changes brought about by the reorganisation of States on the 1st day of November, 1956, a State Council is functioning either in a part of a State or in more than one State, the Central Government may, after consulting the **25** State Government or Governments concerned, by order provide for all or any of the following matters, namely:— Special provisions for dissolution or reconstitution and reorganisation of State Councils.

(a) the dissolution of the State Council;

30 (b) the reconstitution and reorganisation in any manner whatsoever of the State Council, including the constitution, where necessary, of new State Councils;

(c) the extension of the term of office of the members of a State Council for any period or periods not exceeding two years in the aggregate;

35 (d) the area in respect of which the reconstituted State Council or new State Council shall function and operate;

(e) the transfer, in whole or in part, of the assets, rights and liabilities of the State Council (including the rights and liabilities under any contract made by it) to any other State Councils

or State Governments and the terms and conditions of such transfer;

(f) the substitution of any such transferee for the State Council or the addition of any such transferee, as a party to any legal proceeding to which the State Council is a party; and 5 the transfer of any proceedings pending before the State Council to any such transferee;

(g) the transfer or re-employment of any employees of the State Council to, or by, any such transferee and subject to the provisions of section 111 of the States Reorganisation 10 Act, 1956, the terms and conditions of service applicable to such employees after such transfer or re-employment;

(h) such incidental, consequential and supplementary matters as may be necessary to give effect to the purposes of this section. 15

(2) Where an order is made under this section, transferring the assets, rights and liabilities of any State Council, then, by virtue of that order, such assets, rights and liabilities of the State Council shall vest in, and be the assets, rights and liabilities of, the transferee. 20

(3) Every order made under this section shall be published in the Official Gazette and shall be laid before each House of Parliament, as soon as may be, after it is made.

19. Chapters III, IV and V of the principal Act shall be deemed to have taken effect in the territories which immediately before the 25 commencement of the Constitution were either comprised in the Province of Bombay or being administered as if they formed part of that Province, on the earliest date on which any act, proceeding or thing was done or taken in the said territories by the Government or by any officer of Government or by any other authority in 30 the belief or purported belief that the said Chapters had taken effect in the said territories and that such act, proceeding or thing was being done or taken under the said Chapters; and all acts, proceedings and things of the nature referred to above, done or taken in the said territories between the said date and the commencement 35 of this section by the Government or by any officer of Government or by any other authority shall for all purposes be deemed to be, and to have always been, done or taken in accordance with law; and no suit or other proceeding shall be maintained or continued against the Government or any person or authority whatsoever on 40 the ground that any such act, proceeding or thing was not done or taken in accordance with law.

Validation
of certain
acts.

STATEMENT OF OBJECTS AND REASONS

The Pharmacy Act, 1948 (8 of 1948), which provides for the regulation of the profession and practice of pharmacy has been in force since 1948. This Bill seeks to amend the Act so as to give effect to the following objects, namely:—

- (1) the extension of the Act to the areas comprised in the former Part B States;
- (2) the introduction of provisions necessary to meet the situation which has arisen on account of the reorganisation of States which took effect on 1st November, 1956;
- (3) the registration of certain categories of persons.

Opportunity has also been taken to make a few minor amendments in the Act, the need for which has been brought to light in the course of the administration of the Act during the last ten years.

The Notes on clauses appended hereto explain the provisions of the Bill, wherever necessary.

D. P. KARMARKAR.

NEW DELHI;

The 1st December, 1958.

Notes on clauses

Clause 2.—The Act now in force does not extend to the areas comprised in the former Part B States. Further, after the re-organisation of States, it is operative in some parts of a reorganised State but not in the other parts thereof. *Sub-clause (a)* seeks to extend the Act to the whole of India except the State of Jammu and Kashmir, while *sub-clause (b)* will enable a State Government to bring the provisions of Chapters III, IV and V of the Act into operation in any portion of the State in which they were not operative before reorganisation. *Sub-clause (b)* also proposes to omit the time-limit of three years laid down in section 1(3) for bringing these Chapters into operation, since that time-limit expired long ago.

Clause 3—Sub-clause (a).—The definition of 'Indian University' is being amplified to cover a university established by a law of a former Part B State Legislature.

Sub-clause (b).—The existing definition of "medical practitioner" is being amplified for the purpose of bringing within its scope dentists and veterinary practitioners who also practise the modern scientific system of medicine.

Clause 4—Sub-clause (a) and clauses 7 and 8.—The Drugs Controller, India, and the Drugs Controller of a State are not members of the Pharmacy Council of India and the State Council respectively. These officers who are intimately connected with the licensing of drugs and pharmacies under the Drugs Act, 1940, are being made *ex officio* members of the Central Council and State Council respectively.

Clause 4—Sub-clause (b).—The Bill seeks to extend the Act for the first time to the States of Kerala, Mysore and Rajasthan. As it will take time for members to be elected by these Councils, the sub-clause vests in these State Governments the power of nominating members for an initial period of five years.

Clauses 5 and 6.—The amendments seek to omit provisions which are spent.

Clauses 9 and 10.—Clause 9 and sub-clauses (a) (i) and (b) (i) of clause 10 seek to amend sections 31 and 32. Sections 31 and 32(1) do not prescribe a minimum age-limit for a person who desires his

name to be entered in the register. It is now proposed to fix the age-limit in these sections at 18 years, since it is considered not desirable to permit the registration of minors. The age-limit of 21 years specified in section 32(2) for subsequent registration is rather high, as ordinarily pharmacists complete their period of training after matriculation at the age of 18 years. The age-limit is therefore being reduced to 18.

Sub-clause (a) (ii) and sub-clause (b) (ii) of clause 10 will entitle a pharmacist registered in one State to be registered as such in another State on the strength of his registration in the former State.

Clause 11.—Clauses (a) to (g) of new section 32A (1) seek to permit the registration of certain categories of persons who, though eligible for registration under section 31, could not, or did not, get themselves registered or may have been affected by the reorganisation of States, but for whom suitable provisions require to be made. It is, however, provided that all these new categories of persons should satisfy the conditions for registration set out in section 31, before they are registered. Further, this provision is intended to be operative only for a limited period.

Clause 12.—The amendment seeks to dispense with the need for the making of an endorsement by the Registrar on the certificate of registration, when the annual renewal fee is paid.

Clause 13.—The amendments proposed will enable the removal of the name of a registered pharmacist from the register in a case where a person runs the pharmacy and employs for that purpose a registered pharmacist as well as assistants under that pharmacist and the assistant is convicted of an offence or is guilty of infamous conduct in a professional respect.

Clause 14.—As the printing of the register annually causes unnecessary expenditure to State Councils, the printing of an annual supplement containing additions and amendments to the register is being proposed. The printing of an up-to-date register once in five years, i.e., before elections, is however, being provided for.

Clause 15.—Sub-clause (a).—The amendment seeks to prohibit the combination of any of the words mentioned in section 41(2) (b) with any other word not so mentioned, because even in such cases persons are likely to be considered as registered pharmacists.

Clause 16.—Sub-clause (a) seeks to prevent the dispensing of medicines by an unqualified person under the direct and personal

supervision of a registered pharmacist, as this provision is not desirable from the point of view of the safety of the public.

Clause 17.—Sub-clause (b) is intended to provide for the preparation of a Code of ethics for pharmacists, which will be of assistance in the enforcement of the Act.

Clause 18.—On account of the reorganisation of States, some of the existing State Councils are functioning in more than one State by virtue of section 109 of the States Reorganisation Act, 1956. Necessary enabling provisions are sought to be made whereby State Councils may be suitably reorganised.

Clause 19.—Although action was taken under the Act, no formal notification was issued by the State Government of Bombay for bringing Chapters III, IV and V into effect before taking such action. This clause seeks to regularise the position.

FINANCIAL MEMORANDUM

Section 3 of the Pharmacy Act, 1948 (8 of 1948), provides for the constitution of the Central Pharmacy Council of India (known as the 'Central Council'). It is proposed to amend this section so as to provide that the Drugs Controller (India) who is intimately connected with the problems concerning the licensing of pharmacies, etc., or, in case he is unable to attend any meeting, a person authorised by him in writing in this behalf, should also be a member of the Central Council. Again, as a result of the reorganisation of States, some additional members will be elected to the Central Council by the State Councils of Pharmacy (known as 'State Councils'). The Central Council meets normally twice a year and the expenditure involved on account of travelling allowance of the Drugs Controller (India) and some of the additional members elected by State Councils is not likely to exceed Rs. 3,000 per annum. This expenditure has to be borne by the Central Government. The receipts of the Central Council from State Councils may show an increase consequent on the formation of State Councils in States to which the Pharmacy Act will be extended; and although this increase may indirectly result in saving in the grant made by the Central Government to the Central Council, it is not possible at present to state what the saving is likely to be. The estimated additional expenditure to be borne by the Central Government on this account is likely to be not more than Rs. 3,000 a year.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17(b) of the Bill seeks to empower a State Government to make rules regarding the conduct of pharmacists and their duties in relation to medical practitioners, the public and the profession of pharmacy. Such a provision is necessary for improving the standard of dispensing by pharmacists. The matter is also one which can be dealt with more appropriately by rules according to the conditions prevailing from time to time.

Clause 18 of the Bill empowers the Central Government to issue orders with reference to State Councils in respect of various matters relating to them, e.g., their dissolution, reconstitution and reorganisation, the extension of the term of office of members up to a maximum of two years, the area in respect of which the reconstituted or new Council should operate, the transfer of assets and liabilities to the reconstituted or new State Councils or the State Governments, the transfer or re-employment of staff. As a result of the States Reorganisation Act, 1956, the State Councils constituted under the Pharmacy Act before 1st November, 1956, for the purposes of individual States became transformed into inter-State Corporations on that date. To meet the situation, it was provided as a transitional provision in section 109 of the States Reorganisation Act that such a corporation should continue to function and operate in those areas in respect of which it was functioning and operating immediately before 1st November, 1956, subject to the directions of the Central Government until other provision was made by law in respect of that corporation. This provision cannot continue indefinitely and it is necessary to reconstitute and reorganise the State Councils so that there is one State Council for each State. Various problems, some of which have been mentioned above, may arise for consideration in this connection and they may also vary from State to State. Power has therefore been taken by the Central Government to issue orders for this purpose after consulting the State Governments concerned and to notify them in the Official Gazette. These orders will also be laid before both Houses of Parliament.

Having regard to what is stated above, the delegation of legislative power is of a normal character

M. N. KAUL,
Secretary.